

**FEDERAL ELECTION COMMISSION**  
**999 E Street, N.W.**  
**Washington, D.C. 20463**

**FIRST GENERAL COUNSEL'S REPORT**

**RAD REFERRAL: 08L-14**

**DATE OF REFERRAL: February 27, 2008**

**DATE ACTIVATED: March 4, 2008**

**EXPIRATION OF SOL: January 31, 2010**

**SOURCE:**

**INTERNALLY GENERATED**

**RESPONDENTS:**

**San Antonio Police Officers' Association PAC  
and Robert Grajeda, in his official  
capacity as Treasurer  
Clifford Morgan**

**RELEVANT STATUTES:**

**2 U.S.C. § 432(b)(3)  
2 U.S.C. § 432(c)(5)  
2 U.S.C. § 434(b)**

**INTERNAL REPORTS CHECKED:**

**Disclosure Reports  
RAD Referral Materials**

**OTHER AGENCIES CHECKED:**

**Bexar County (Texas) District Attorney's Office**

**I. INTRODUCTION**

The Reports Analysis Division ("RAD") referred the San Antonio Police Officers' Association PAC and Robert Grajeda, in his official capacity as treasurer, (the "Committee") to this Office for possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), resulting from the apparent unauthorized disbursement of Committee funds in the amount of \$62,400 by former Committee treasurer Clifford Morgan. RAD learned of the embezzlement in September 2006, after calling the Committee to inquire why they had not filed any disclosure reports in 2006. Only then did the Committee inform RAD that Clifford Morgan, a former Committee treasurer, had embezzled funds from the San Antonio Police Officers'

1 Association ("the Association") and its PAC, and that an investigation was underway.  
2 Subsequently, the Committee informed RAD that Mr. Morgan had made \$62,400 in  
3 unauthorized disbursements from the Committee's bank account and had failed to disclose the  
4 disbursements in the Committee's reports. On November 28, 2007, Mr. Morgan was indicted by  
5 the Bexar County (Texas) District Attorney's Office ("DA's Office") for theft of between  
6 \$100,000 and \$200,000 from the Association, a second-degree felony. The criminal matter is  
7 still pending. By letter dated January 5, 2009, we gave Mr. Morgan the opportunity to provide  
8 us with any factual and legal information he believes relevant to this matter. Counsel for Mr.  
9 Morgan has declined to provide a response at this time because of the pending criminal matter.

10 Based on the available information, including information provided by the Committee  
11 and by the DA's Office, we recommend that the Commission open a Matter Under Review and  
12 find reason to believe that the San Antonio Police Officers' Association PAC and Robert  
13 Grajeda, in his official capacity as treasurer, violated 2 U.S.C. §§ 432(c)(5), 434(b)(4) and (6),  
14 by failing to accurately keep an account of and report certain disbursements in the Committee's  
15 disclosure reports.<sup>1</sup> We also recommend that the Commission find reason to believe that the  
16 embezzler, former treasurer Clifford Morgan, knowingly and willfully violated 2 U.S.C.  
17 §§ 432(b)(3), 432(c)(5), 434(b)(4) and (6), by commingling Committee funds with his personal  
18 funds, and by failing to accurately keep an account of and report certain disbursements in the  
19 Committee's disclosure reports.

<sup>1</sup> The sources of the available information regarding the embezzlement are the information provided to RAD by the Committee, disclosure reports, news reports of the alleged activity, and copies of the indictment, search warrants and supporting affidavits provided by the DA's Office. The DA's Office has agreed to provide us with official documents contained in their state's file once the case is adjudicated.

**II. FACTUAL SUMMARY**

The Committee is a separate segregated fund of the Association, a labor organization, and a political committee within the meaning of 2 U.S.C. § 431(4)(B).<sup>2</sup> See 2 U.S.C. § 441b(b). The Committee has filed reports with the Commission since 2004. During the relevant period, from February 2004 through February 2006, Clifford Morgan served as treasurer for both the Association and the Committee.

Based on information provided by the Committee, on December 4, 2004, Mr. Morgan made an unauthorized transfer of \$60,000 from the Committee Account to the Association's Police Benefit Fund/Store Operating Account ("Police Benefit Fund Account"). He then used the funds deposited into the Police Benefit Fund Account to make other transfers and disbursements. Specifically, in July and December 2005, he made three transfers totaling \$55,594.13 from the Police Benefit Fund Account to the Association's Operating Account (\$40,000 on July 14, 2005, \$14,594.13 on July 20, 2005, and \$1,000 on December 9, 2005). On July 14, 2005, he also transferred \$1,000 from the Police Benefit Fund Account to a Wells Fargo Money Service Business Account. This amount was withdrawn with an ATM card.<sup>3</sup> According to Mr. Grajeda, Mr. Morgan also used a Committee credit card to incur charges for personal expenses totaling \$2,400, which the Committee paid. Mr. Grajeda provided vendor names and

<sup>2</sup> The Association conducts programs and fundraisers for the benefit of police officers and their families, and for the local community. See [www.sapoa.org](http://www.sapoa.org) (last visited on March 11, 2009). The Association also has a state PAC that files disclosure reports with the Texas Ethics Commission.

<sup>3</sup> The information provided by the Committee does not specify whether the Wells Fargo Money Service Business Account is an Association account. This account may be a personal business account of Mr. Morgan.

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1 amounts for the credit card transactions, but not the dates.<sup>4</sup> The Committee noted that the  
2 \$60,000 unauthorized transfer and credit charges were not disclosed on the Committee's original  
3 disclosure reports and that the alleged transactions "were made without the knowledge and/or  
4 authority of the Committee and/or the Association's Officers and Board of Directors."

5 According to publicly available information provided by the DA's office, Mr. Morgan  
6 wrote three checks totaling \$49,080.88 drawn on the Association's main operating account (into  
7 which he had deposited funds from the Police Benefit Fund Account at around the same time),  
8 and deposited the checks into his personal bank account at Security Service Federal Credit Union  
9 ("SSFCU") (\$25,276.00 on June 27, 2005, and \$11,200.05 and \$12,604.83 on November 4,  
10 2005).<sup>5</sup> At around the same time, Mr. Morgan used those deposited funds to make unauthorized  
11 personal purchases. For instance, on June 29, 2005, he wrote a \$25,250.01 check to purchase a  
12 vehicle, and on November 11, 2005, he wrote a \$14,204.22 check to purchase another vehicle.  
13 Then, on December 5, 2005, Mr. Morgan closed his personal SSFCU account and deposited  
14 \$9,180.69 of the remaining funds that had been withdrawn from the Association account into his  
15 personal Basic Business Services Package account at Wells Fargo Bank. The vehicles and  
16 misapplied funds have been seized by law enforcement authorities as contraband.

17 According to news reports, Mr. Morgan was asked to step down as treasurer on  
18 February 28, 2006, one day after the Association discovered funds missing from its accounts  
19 during an internal audit. *See News Roundup, SAN ANTONIO EXPRESS-NEWS, March 9, 2006.*

<sup>4</sup> According to Mr. Grajeda, the credit card transactions at issue were: 1) Mufflers 'R Us, net charge of \$1,605 (itemized charges of \$1,103.48 and \$501.61); 2) Family Medical, net charge of \$204.02 (itemized charges of \$132.56, \$38.97, and \$32.49); 3) Fadalgo Bay Office, net charge of \$238.89 (itemized charges of \$53.90 and \$184.99); 4) Lords Jewelry, \$129.48; and 5) UT Receivables, \$286.86. Only one of these credit card charges was disclosed in the Committee's amended disclosure reports, a \$286.86 disbursement, dated August 26, 2005, to "UT Receivables" for "student fees" which appears in the amended 2005 Year End Report.

<sup>5</sup> The SSFCU account is a personal business account of Mr. Morgan and his wife.

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1 The internal audit was apparently triggered when the Association began accruing overdraft fees.

2 See Brian Chasnoff, *Ex-Union Official Indicted in Thefts*, SAN ANTONIO EXPRESS-NEWS,

3 November 29, 2007.

4 From February 2006 through August 2006, the Committee failed to file disclosure reports

5 and RAD received no communications from the Committee.<sup>6</sup> On September 14, 2006, RAD

6 contacted the Committee regarding its failure to file and respond to administrative fine notices.

7 The Committee's representative informed RAD for the first time that Mr. Morgan had resigned as

8 Committee treasurer because of alleged "unethical" activities. The representative indicated that

9 Robert Grajeda was the new Committee treasurer and that the Committee was being reorganized.

10 The representative stated that the new treasurer most likely had no idea that he had to file reports.

11 RAD advised the representative that the new treasurer should contact RAD immediately.

12 On September 15, 2006, Mr. Grajeda called RAD to confirm that he was the treasurer of

13 the Committee and had been treasurer since March 2006, due to the firing of Mr. Morgan. He

14 told RAD that he had not received any administrative fine notices and that he had an employee

15 who stated that she had been filing on a monthly basis. RAD advised him that the filing

16 frequency for the Committee was quarterly and that no reports had been received in 2006.<sup>7</sup>

17 Mr. Grajeda informed RAD that Mr. Morgan had been fined for embezzling \$100,000 from the

18 Association and that a criminal investigation was underway to determine the scope of the

<sup>6</sup> According to the referral, the Committee has no active or pending referable issues.

The Committee was involved in three Administrative Fines cases for late or non-filed 2006 reports, for which it paid fines totaling \$7,937.

<sup>7</sup> The monthly disclosure reports referred to by the employee are probably those filed by the PAC's state account with the Texas Ethics Commission

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1 embezzlement and whether any of the embezzled funds belonged to the Committee.<sup>8</sup> On  
2 November 28, 2007, the DA's Office issued a press release stating that Clifford Morgan, a San  
3 Antonio Police Officer for eleven years and treasurer of the Association from 2002-2006, had  
4 been indicted for stealing \$100,000-\$200,000 from the Association. The press release noted that  
5 Mr. Morgan used the Association's checks and credit cards for his personal benefit. The  
6 criminal case is still pending.

7 On October 15, 2008, the Committee filed amended disclosure reports for 2004-2008.  
8 The Committee also filed an E-text message explaining that "Following some alleged aberrant  
9 behavior by the former PAC treasurer," the Committee had voluntarily audited its records and  
10 that an investigation determined that the former treasurer had transferred \$60,000 from the  
11 Committee account to the Association's General Account. The message further noted that none  
12 of the \$60,000 was returned to the Committee account and none was used for Federal elections.  
13 The message further stated that the bulk of the alleged improper use of funds by the former  
14 Committee treasurer occurred through the Association accounts. The \$60,000 transfer, dated  
15 December 4, 2004, appears on the amended 2004 Year End Report.

16 According to the Committee, Mr. Morgan has begun reimbursing the Association. In  
17 addition to a personal check from Mr. Morgan for \$9,000, the Committee has sold a truck he had  
18 purchased with the embezzled funds and applied the proceeds (\$17,000) to the amount owed.  
19 The Committee is also holding part of Mr. Morgan's retirement benefits to be applied towards  
20 the reimbursement of the embezzled funds.

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<sup>8</sup> The investigation was conducted by the Special Crimes Unit of the San Antonio Police Department.

**III. LEGAL ANALYSIS**

**A. Liability of the Committee**

Although the Committee's failure to accurately keep an account of and report disbursements stems from Mr. Morgan's embezzlement of Committee funds, the Committee nevertheless violated the Act when it filed the resulting inaccurate reports. Under the Act, the Committee, through its treasurer, is ultimately required to accurately keep an account of and report disbursements. See 2 U.S.C. §§ 432(c)(5), 434(h)(4) and (6). Committee treasurers are responsible for the timely and complete filing of disclosure reports and for the accuracy of the information contained therein. See 11 C.F.R. § 104.14(d). The failure to implement adequate internal control procedures over Committee finances (e.g., regular audits, control procedures over receipts and disbursements, segregated duties, or periodic review of finances) is a consideration when determining Committee liability. See MUR 5721 (Lockheed Martin Employees' PAC); MUR 5811 (Doggett for U.S. Congress); MUR 5812 (Ohio State Medical Association PAC); MUR 5813 (Georgia Medical PAC); MUR 5814 (Lamutt for Congress); MUR 5872 (Jane Hagué for Congress); and MUR 5923 (American Dream PAC); see also MUR 5933 (Indiana Democratic Congressional Victory Committee) (referred to the Alternative Dispute Resolution Office where the matter was resolved with a settlement agreement (ADR Case #479)) and RR 08L-22/Pre-MUR 470 (National Republican Congressional Committee) (the Commission did not open a MUR with respect to the NRCC, deciding to take no further action at this time as to the NRCC pending an investigation of the embezzler); but see, e.g., RR 07L-51/Pre-MUR 460/MUR 5971 (Lindsey Graham for Senate).

The Commission has created a safe harbor from monetary penalties for committees that have certain basic internal controls in place at the time of an embezzlement, immediately inform

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1 law enforcement and the Commission of the embezzlement, and voluntarily amend their reports  
2 to correct the inaccuracies. See Statement of Policy; Safe Harbor for Misreporting Due to  
3 Embezzlement, 72 Fed. Reg. 16,695 (April 5, 2007). The activity here occurred before the  
4 publication of the safe harbor policy. Nevertheless, in this case, the Committee would not appear  
5 to qualify for the safe harbor even if it had internal controls because it did not comply with the  
6 required post-discovery steps: The Committee learned of the embezzlement in February 2006,  
7 but did not inform RAD of the embezzlement until months later after RAD contacted them to  
8 inquire about their failure to file their reports and respond to administrative fine notices. In  
9 addition, the Committee did not amend its disclosure reports to correct reporting errors resulting  
10 from the misappropriation until more than two years after discovery of the embezzlement.

11 In this matter, it appears that the Committee failed to disclose at least \$62,400 in  
12 unauthorized disbursements from the Committee. We have little specific information regarding  
13 the internal control procedures, if any, that the Committee had over its finances. The fact that  
14 Mr. Morgan was able to engage in repeated unauthorized transactions over a two-year period  
15 without detection indicates that the Committee may not have had in place minimal internal  
16 controls that would have prevented the embezzlement, or that may have allowed for earlier  
17 detection of the embezzlement.

18 Accordingly, we recommend that the Commission find reason to believe that the San  
19 Antonio Police Officers' Association PAC and Robert Grajeda, in his official capacity as  
20 treasurer, violated 2 U.S.C. §§ 432(c)(5), 434(b)(4) and (6) by failing to accurately keep an  
21 account of and report certain disbursements in its disclosure reports.

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**B. Liability of Clifford Morgan**

Under the Act, a treasurer is required to accurately keep an account of and report disbursements. *See* 2 U.S.C. §§ 432(c)(5), 434(b)(4) and (6). Committee treasurers and any other person required to file any report or statement under the Act and the Commission's regulations are also personally responsible for the timely and complete filing of the report or statement and for the accuracy of any information or statement contained in it. 11 C.F.R. § 104.14(d).

According to Commission policy and practice, a former treasurer may be named as a respondent in his personal capacity when it appears that, while serving as a treasurer, he may have violated obligations that the Act or regulations impose personally on a treasurer and where, among other situations, the violations were knowing and willful. *See Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings*, 70 Fed. Reg. 3 (January 3, 2005); *see, e.g.*, MUR 5610 (Earl Allen Haywood) and MUR 5721 (Lockheed Martin Employees' PAC). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge" that an action was unlawful. *United States v. Hopkins*, 916 F.2d 207, 214 (5<sup>th</sup> Cir. 1990). In *Hopkins*, the court found that an inference of a knowing and willful violation could be drawn "from the defendants' elaborate scheme for disguising their . . . political contributions. . ." *Id.* at 214-15. The court also found that the evidence did not have to show that a defendant "had specific knowledge of the regulations" or "conclusively demonstrate" a defendant's "state of mind," if there were "facts and circumstances from which the jury reasonably could infer that [the defendant] knew her conduct was unauthorized and illegal." *Id.* at 213 (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5<sup>th</sup> Cir.), *cert. denied*, 493 U.S. 838 (1989)).

1 The available information suggests that Mr. Morgan attempted to disguise his  
2 embezzlement by not disclosing the unauthorized transactions in Committee reports he prepared  
3 and then filed with the Commission. Mr. Morgan knowingly and willfully failed to keep an  
4 accurate account of Committee funds in order to hide his fraudulent scheme and failed to  
5 disclose these transactions in reports filed with the Commission. Accordingly, we recommend  
6 that the Commission find reason to believe that Clifford Morgan, in his personal capacity,  
7 knowingly and willfully violated 2 U.S.C. §§ 432(c)(3), 434(b)(4) and (6).

8 Furthermore, the Act prohibits the commingling of ~~committee~~ Federal funds with "the  
9 personal funds of any individual." 2 U.S.C. § 432(b)(3) and 11 C.F.R. § 102.15. In past cases,  
10 the Commission found that embezzlers violated 2 U.S.C. § 432(b)(3) in matters where  
11 individuals misappropriated committee funds by making unauthorized disbursements of  
12 committee funds to themselves or to others to pay for personal expenses. *See, e.g.*, MUR 5610  
13 (Earl Allen Haywood); MUR 5721 (Lockheed Martin Employees' PAC); MUR 5811 (Doggett  
14 for U.S. Congress); MUR 5872 (Jane Hague for Congress); MUR 5920 (Women's Campaign  
15 Fund); MUR 5923 (American Dream PAC); MUR 5971 (Mary Jennifer Adams); and MUR 6179  
16 (Christopher Ward); *but see, e.g.*, MUR 5898 (Ryan Pennington).

17 Further, based on the available information, Mr. Morgan knowingly and willfully  
18 commingled Committee funds with his personal funds, in violation of 2 U.S.C. § 432(b)(3) by  
19 writing himself checks from an Association account (into which funds transferred from the  
20 Association's Committee account had been deposited) without authorization and depositing

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1 those checks into his personal bank accounts to pay for personal expenses.<sup>9</sup> In addition, it  
2 appears that Mr. Morgan disguised this activity for a two-year period; as noted, the DA's Office  
3 has already indicted him for theft in connection with the embezzlement. Accordingly, we  
4 recommend that the Commission find reason to believe that Clifford Morgan, in his personal  
5 capacity, knowingly and willfully violated 2 U.S.C. § 432(b)(3) by commingling Committee  
6 funds with his personal funds.

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**V. RECOMMENDATIONS**

1. Open a MUR;
2. Find reason to believe that the San Antonio Police Officers' Association PAC and Robert Grajeda, in his official capacity as treasurer, violated 2 U.S.C. §§ 432(c)(5), 434(b)(4) and (6);
3. Find reason to believe that Clifford Morgan knowingly and willfully violated 2 U.S.C. §§ 432(b)(3), 432(c)(5), 434(b)(4) and (6);
4. Enter into conciliation with the San Antonio Police Officers' Association PAC and Robert Grajeda, in his official capacity as treasurer, prior to a finding of probable cause to believe;
5. Enter into conciliation with Clifford Morgan prior to a finding of probable cause to believe;
6. Approve the attached Factual and Legal Analysis for the San Antonio Police Officers' Association PAC;
7. Approve the attached Factual and Legal Analysis for Clifford Morgan;
8. Approve the attached conciliation agreement with the San Antonio Police Officers' Association PAC;
9. Approve the attached conciliation agreement with Clifford Morgan; and,

10. Approve the appropriate letters.

Thomasenia P. Duncan  
General Counsel

4-08-09  
Date

BY: Kathleen M. Guith

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